

Summary Analysis and Implementation
of
Chapter 461 of the Acts of 2004

Commonwealth of Massachusetts
Division of Banks

February 2005

Introduction

On Thursday, December 30, 2004, Lieutenant Governor Healey signed into law Chapter 461 of the Acts of 2004 ("Chapter 461" or the "Act"). Below is the Division of Banks' (the "Division") summary of the law, broken down by category, followed by descriptions of the actions being taken by the Division to implement the Act. This paper is for informational purposes only and is not intended to serve as a definitive opinion or interpretation by the Division. The Act goes into effect on March 30, 2005. A copy of Chapter 461 is posted on the Legislature's website at www.mass.gov/legis/laws/seslaw04/index.htm.

Summary

Chapter 461 makes significant changes to the Commonwealth's banking laws. The Act contains 25 SECTIONS, many of which make substantial changes to the laws governing state-chartered banks. Credit unions would also be affected by this legislation.

The Division has organized the Act's SECTIONS into the following categories:

- Loans and Mortgages;
- Investments;
- Limited Purpose Trust Companies;
- Banking Offices and ATMs;
- Credit Unions;
- Internet Banking;
- Community Reinvestment Act ("CRA");
- School Bank Programs;
- Miscellaneous; and
- Technical Corrective Change.

Loans and Mortgages

(Includes amendments set out in SECTION 15)

Chapter 461 sets forth provisions to substantially modify and modernize Massachusetts General Laws chapter 167E, governing loans by state-chartered banks. Chapter 167E is an historic record of the expansion of bank lending powers in the Commonwealth throughout the 1900s. New classes of powers have been added to outdated classes of powers without any meaningful restructuring of the statutes. This Act seeks to rewrite these lending statutes.

An example of the scope of the modernization is the treatment of mortgage lending authority. Currently state-chartered banks must slot each mortgage loan within over twenty-five different classes of loans set out in the statute. The Act, with only certain exceptions such as for reverse mortgage loans, grants a bank general mortgage lending authority. Changes are also made to clarify the statute governing the aggregate limits on loans to any one borrower. Technical corrections to statutory cross references to provisions of chapter 167E are also made. The lending powers in chapter 167E apply only to state-chartered savings banks, co-operative banks, and trust companies.

SECTION 15 of Chapter 461 rewrites the mortgages and loans statute, chapter 167E, in its entirety. The main amendments to the definitions in Section 1 are the new definition of capital, the addition of the definition of real estate, and the deletion of the definitions of board of investment, committee, cooperative bank mortgage, stock corporation, surplus account and mutual institution. Section 2 provides various lending powers and also whatever further incidental or complementary powers may be fairly implied from those expressly conferred that are reasonably necessary to enable it to exercise fully those powers according to common customs and usages. The powers set forth in Section 2 include the ability to discount, buy, invest in, hold, assign, transfer, sell and negotiate various evidences of debt and to advance money or credits on real estate, on improvements thereto or on personal security on terms to be agreed upon. Section 3, relative to lending, sets forth the conditions by which a bank may do the following: make or acquire any mortgage residential real estate loan; extend credit secured by first or subordinate liens on or interests in real estate; and extend credit to finance the construction of industrial or commercial buildings. Other types of loans are also specified in this section. These authorities eliminate the need for all the previous various classes of loans. Section 4, relative to lending standards, requires written loan policies consistent with safe and sound banking practices as well as prudent underwriting standards. Section 5 sets forth other loan requirements, including provisions for appraisals and retains the restrictions on loans secured by the bank's stock and other related provisions. Section 6, relative to the aggregate loan limitations to one borrower, streamlines the limitations and provides that all states and political subdivisions will be treated equally. The base for the aggregate loan limitation to one borrower has been changed to capital as defined in Section 1. The use of capital as the base allows for the elimination of separate loan limitation subsections for stock banks and another for mutual institutions. Section 6 also clarifies the applicability of aggregate loan limitations when loans directly benefit another person or there was a common enterprise between different persons. The definition of person is also broadened to reflect modern forms of corporate organization. Section 7 retains the reverse mortgage law without amendment. Section 8 retains the existing authority for variable rate mortgage loans with only a technical change to delete a reference to the various classes of mortgage loans.

As noted above, although eliminating many statutory provisions, the revised chapter 167E requires in Section 4 that state-chartered banks adopt and maintain comprehensive loan policies consistent with safe and sound banking practices.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- **Revise 209 CMR 47.00 *Parity with National Banks* for necessary technical amendments.**
- **Repeal 209 CMR 34.00 *Maximum Loan Limitations for Certain Classes of Mortgage Loans*.**
- **Revise Regulatory Bulletins 1.3-101 *Adjustable Rate Mortgage Loans* and 2.1-102 *Insider Transactions* for necessary technical amendments.**

Investments

(Includes amendments set forth in SECTIONS 7, 16, 17 and 18)

One major change to chapter 167F, governing investments by state-chartered banks, was made to reflect passage of the federal Gramm-Leach-Bliley Act of 1999. The Act also amends

chapter 167F to provide banks with the powers enumerated and whatever further incidental or complementary powers that may be fairly implied from those expressly conferred that are reasonably necessary to enable it to exercise fully those powers according to common customs and usages. The investment powers in chapter 167F apply only to state-chartered savings banks, co-operative banks, and trust companies.

SECTION 18 sets forth the major change to chapter 167F by amending Section 2 to allow state-chartered banks to engage in activities or acquire companies engaged in activities as are determined by the Commissioner which are financial in nature or incidental to such financial activity or complementary to a financial activity and do not pose a substantial safety and soundness risk to the bank. All such activities would be subject to approval of the Commissioner and subject to such limitations and conditions as he may impose. In making a determination on the financial activity the Commissioner shall consider but is not limited to activities which are allowed under the federal Gramm-Leach-Bliley Act of 1999. SECTION 18 also includes a technical amendment to Section 2 of chapter 167F to create a separately numbered paragraph for previously granted authority for state-chartered banks to invest in the Redevelopment Access to Capital program. A provision was added which prohibits a state-chartered bank or any subsidiary or affiliate from selling title insurance.

SECTION 17 amends chapter 167F by amending Section 2 to provide banks with the powers enumerated and whatever further incidental or complementary powers that may be fairly implied from those expressly conferred that are reasonably necessary to enable it to exercise fully those powers according to common customs and usages. The amendment added the reference to complementary powers.

SECTION 7 amends section 37 of chapter 167F to remove the prohibition against banks engaging in the business of a travel agency. SECTION 16 amends the definitions of the following terms in Section 1 of chapter 167F: bank, board, stock corporation, surplus account and thrift institution. In general, those changed definitions are clarifications and not substantive.

<p>ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:</p>

- No action is required.

Limited Purpose Trust Companies

(Includes amendments set out in SECTIONS 1, 10, 19, and 23)

The Act in SECTION 23 would authorize a charter for a non-FDIC insured limited purpose trust company in the Commonwealth to conduct only trust and fiduciary operations while neither receiving deposits nor making loans. Present law does not allow a limited purpose trust company charter and, therefore, forces entities seeking to establish a bank under a limited purpose charter to obtain such a charter from a federal agency or to establish operations in another state. This provision would permit these firms to perform trust services for clients through a limited purpose trust company chartered by the Commonwealth.

This SECTION would amend chapter 172 of the General Laws, governing state-chartered trust companies, to make a limited purpose charter available and it would amend other banking statutes to govern or exempt the activities of a limited purpose trust company under those laws.

SECTION 23 amends said chapter 172 by adding a new Section 9A, relative to the Division of Banks' application and approval process for limited purpose trust companies, and provides that any such limited purpose trust company shall not accept deposits, make loans or otherwise carry on a banking business in the Commonwealth. Upon approval and receipt of a certificate from the Commissioner of Banks, the corporation shall file its articles of organization with the Secretary of State, provided that the certificate shall be deemed to be revoked if the corporation does not commence business within one year of issuance. Section 9A also includes provisions for establishment of a trust office or a representative trust office in any other state, following a 30-day notice period. With approval of the Commissioner, a limited purpose trust company established under the law of any other state or the United States can establish and maintain an office in the Commonwealth, provided the Commissioner determines the laws of said state are no more restrictive than the laws of the Commonwealth. In addition, Section 9A authorizes the Commissioner to establish rules and regulations governing limited purpose trust companies.

SECTION 19 would include a limited purpose trust company in the definition of a bank for purposes of chapter 167G of the General Laws, which sets out the fiduciary and trust business which can be conducted. SECTION 10 exempts a limited purpose trust company from the definition of a banking institution for the purposes of the bank holding company statute, chapter 167A of the General Laws. Therefore, the establishment or acquisition of a limited purpose trust company would not trigger that statute. This is consistent with past rulings of the Division and federal agencies. SECTION 1 adds a definition of a limited purpose trust company to the list of banks in section 1 of chapter 167, which are subject to examination and supervision by the Division. The Act also exempts from the provisions of chapter 167A any entity which by its charter may only conduct activities "substantially equivalent" to a limited purpose trust company.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- Develop an application process, including minimal capitalization requirements.
- Develop an examination program for both trust and safety & soundness risks.
- Determine applicability of the Community Reinvestment Act ("CRA") and other specified laws to limited purpose trust companies, including the definitions in 209 CMR 46.00 *Community Reinvestment*.

Banking Offices and ATMs

(Includes amendments set out in SECTIONS 11, 12 and 13)

Chapter 461 amends several areas of law to streamline the processes involving a bank's establishing or moving its banking offices and investing in or terminating ATMs, referred to in statute as electronic branches.

Chapter 167C of the General Laws governs the opening, closing and relocation of banking offices as well as their retention after a merger or acquisition. The statute covers both intra- and inter-state state operations as well as mobile branch offices. This Act makes significant changes in the procedures for such banking office activity and rewrites the entire chapter. The chapter also contains other authorities and provisions.

The Act changes the process for the establishment of a new branch office. Current law requires an application to and approval by the Commissioner. SECTION 13 of the Act, in section 3 of the revised chapter 167C, would allow a bank with a Community Reinvestment Act ("CRA") rating of at least "Satisfactory" to establish a branch office with sixty days advance notice to the Commissioner. The Act does allow the Commissioner to disapprove the establishment of a branch office if he determines in writing in the sixty-day period that the public would not benefit or competition would be adversely impacted.

This Act also expands the authority to conduct mobile branch banking. Despite the authority to have interstate branch offices, the current law on mobile branch banking, section 6 of chapter 167C, is still limited to the county in which the bank's main office is located. SECTION 13 of the Act, in section 4 of the revised chapter 167C, would extend the mobile branch banking authority from home county to now include any county in which the bank has a branch office. Other provisions of the existing law are retained.

Under present electronic banking law, section 3 of chapter 167B, a bank's investment in ATMs is subject to supervision by the Commissioner of Banks. Factors to be considered by the Commissioner are set out in that law. SECTION 11 of this Act eliminates that provision of law completely. Therefore, such investments would remain within the discretion of each bank.

Another streamlined provision involves a bank's termination of an ATM. Current law, section 4 of chapter 167B, requires a thirty-day notice with reasons for the proposed termination. However, no ATM can be closed until approval is granted by the Commissioner except if there is an emergency. SECTION 12 would still require the filing of a request to terminate, with reasons stated, except in the case of an emergency, but would allow the closing of an ATM automatically thirty days after notice to the Commissioner or sooner with his approval.

<p>ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:</p>

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| <ul style="list-style-type: none">▪ Revise Regulatory Bulletin 2.1-104 <i>Expedited Branch Office Application Procedures</i> for necessary amendments.▪ Eliminate numerous branch applications and replace them with a uniform notice procedure. |
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Credit Unions

(Includes amendments set out in SECTIONS 20, 21, and 22)

Three sections of Chapter 461 amend the credit union statute, chapter 171 of the General Laws. Two are significant in that one expands the geographic area in which a credit union can establish a branch office. Currently, a credit union can only open a branch within its own county or on a site within 25 miles of the main office. SECTION 20 expands the 25-mile limitation to a site 50 miles from the main office.

The second significant amendment expands the way that credit union members can vote at annual or special meetings. In credit unions, members have the authority to vote on various matters, including directors and mergers. Under current law, members are only permitted to vote on such matters in person. SECTION 21 extends the statute to permit voting by mail, provided

that the credit union set forth in its by-laws the methods of voting. Such voting methods would be subject to the conditions and limitations the Commissioner of Banks may establish. SECTION 22 eliminates the second paragraph of section 79 of chapter 171 relative to maintenance of branch offices in a regulatory merger transaction. Other provisions of the statute allow a branch office beyond the 50 miles to be retained in such a situation. Therefore, this one paragraph language is not necessary.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- **Revise the credit union branch application to reflect the increase in radius to 50 miles.**
- **Develop a Regulatory Bulletin or other guidance on the voting of credit union members by mail.**

Internet Banking

(Includes amendments set out in SECTIONS 1, 2, 3, and 9)

As part of its comprehensive review of the banking laws, Chapter 461 seeks to address the existence of internet banking. It does so simply by adding a definition of “Internet Bank” in section 1 of chapter 167 of the General Laws. Under the definition any bank which provides its services exclusively or primarily through the Internet is deemed an internet bank. SECTION 1 of Chapter 461 adds the definition. SECTION 2 adds an internet bank located in the Commonwealth or with depositors or borrowers in Massachusetts to the definition of a bank for the statute governing unfair and deceptive practices or competition by financial institutions. Those statutes are set out in sections 2A through 2G, inclusive, of chapter 167. SECTION 9 exempts an internet bank from the statute requiring banks to cash certain checks of retirees or pensioners. The statute is section 46 of chapter 167. References to internet banking are also included in the amended CRA law discussed below.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- **Revise 209 CMR 46.00 *Community Reinvestment* for necessary amendments.**
- **Revise 209 CMR 35.00 *Check Cashing Procedures for Certain Banks Required to Honor and Cash Certain Checks of Pensioners and Retirees* for necessary technical amendments to exclude internet banks.**

Community Reinvestment Act

(Includes amendments set out in SECTIONS 3, 4, and 5)

This Act makes two significant changes to the Commonwealth’s Community Reinvestment Act (“CRA”). Under CRA a bank or credit union is examined and receives a rating, which is public, on its performance in meeting the credit needs of the communities it serves. SECTION 3 of the Act amends the CRA statute to authorize the Division’s regulations to make adjustments and exceptions for electronic banking activities and internet banking activities of banks. SECTION 3 also expands the scope of CRA to now require a bank or credit union’s performance rating to consider the institution’s providing state-of-the-art computers and internet

access at minimal or no cost to low- and moderate income residents in the assessment of electronic banking activities and electronic delivery of banking services, including internet banking activities of banks.

Under the current CRA law, the Commissioner is required to establish an alternative CRA examination procedure for banks or credit unions which have ratings of “Outstanding” or “High Satisfactory.” Under the language added by SECTION 4 the Commissioner would still be required to establish an alternative examination procedure for such banks and credit unions. In conjunction with the changes, in SECTION 13 of the Act, to allow banks to establish a branch office by notice to the Division, SECTION 4 deletes the existing language for the Division to have an expedited branch application process for any bank with an “Outstanding” CRA rating.

SECTION 5 was intended to be a technical change by striking out the eighth paragraph to reflect the amendments in SECTION 4. However, upon subsequent review of the Act and the current law, it appears all concerned miscounted the paragraphs in section 14 of chapter 167. It appears that the ninth paragraph should have been stricken out since it governs the alternative CRA examination procedures. The eighth paragraph addresses CRA examinations and cooperative agreements with federal regulators as well as other states for conducting and accepting CRA examinations by those other bank regulatory agencies. Since the Commissioner has very broad authority to conduct examination of banks and to use assistants to do so under section 2 of chapter 167, the Division does not believe the deletion of the eighth paragraph will impact existing operations of the CRA examination process.

<p>ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:</p>

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| <ul style="list-style-type: none">▪ Revise 209 CMR 46.00 <i>Community Reinvestment</i> for necessary amendments.▪ Revise Regulatory Bulletin 2.3-103 <i>Alternative CRA Exam Procedures</i> for necessary amendments.▪ Make a statutory amendment to correct a drafting error. |
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School Bank Programs

(Includes amendments set out in SECTIONS 6, 8 and 14)

The current banking laws authorize three separate and distinct educational banking programs in three separate statutes. As part of the effort to streamline the Commonwealth’s banking laws, Chapter 461 consolidates these authorities into one provision and deletes the two other laws. This was a suggestion of the Division.

Presently section 39B of chapter 167 of the General Laws establishes the authority for students in grades four through eight to operate a school bank. Several requirements for a school bank are set out in the law including approval by education officials; the bank’s assets are limited to \$500.00; and, it operates only during the academic year. Such school banks are subject to conditions and restrictions prescribed by the Commissioner of Banks.

Section 37 of chapter 167 generally prohibits unauthorized banking. Two sentences in that statute exempt from its provisions temporary educational training programs sponsored by a bank to train young people in the basic principles and practices of banking by actual participation

in pattern or model organizations. Such programs are subject to the approval and supervision of the Commissioner of Banks.

Section 10 of chapter 167D of the General Laws governs programs to encourage savings among school children. Such programs allow for the collection of bank deposits from children in their schools.

SECTION 8 of the Act would combine all such educational programs into one law. The statute would generally allow any banking institution with a branch office in the Commonwealth to establish educational bank training programs, student savings deposit programs and school branch office programs. Financial institutions under the jurisdiction of the Division of Banks would be subject to terms and conditions for such programs set out by the Commissioner. Federally-chartered banks would conduct such programs consistent with applicable federal laws and regulations.

SECTION 8 rewrites section 37B of chapter 167 to contain the new consolidated authorities. Accordingly, SECTION 6 deletes the educational training program authority in section 37 of chapter 167 and SECTION 14 deletes the student savings program law in section 10 of chapter 167D.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- **Revise Regulatory Bulletin 2.3-104 *School Bank Program* for necessary amendments.**

Miscellaneous

(Includes the amendment set out in SECTION 25)

SECTION 25 of Chapter 461 amends section 114A of chapter 140 of the General Laws in order to exempt subsidiaries of trust companies, savings banks, co-operative banks, savings and loan associations, credit unions, national banking associations, federal savings banks, and federal savings and loan associations or federal credit unions from the licensing provisions of the Small Loan Act. Present law only exempts the financial institutions themselves, and not their subsidiaries, from being licensed as small loan companies. Existing law requires entities exempt from the licensing requirements to still comply with the small loans rate order.

ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:

- **Review all currently licensed small loan companies to determine whether any are subsidiaries of the above and, therefore, now exempt from the licensing provisions.**

Technical Corrective Change
(Includes the amendment set out in SECTION 24)

Chapter 172A of the General Laws governed banking companies or Morris plan loan companies, so-called. There are no such entities currently chartered by the Commonwealth and none can be chartered. Chapter 509 of the Acts of 1981, which was signed into law with an emergency preamble on November 5, 1981, eliminated the authority to apply for such a charter thereby effectively negating the statute. Existing banking companies were required to convert to state-chartered trust companies by December 31, 1981. SECTION 24 finishes what was started in 1981 by repealing chapter 172A from the General Laws.

<p style="text-align: center;">ACTIONS REQUIRED. In order to implement the above provisions of the Act, the Division is taking the following measures:</p>

- No action is required.